See DOJ at A-5. As this Commission and the SCPSC have made clear, however, the Act requires that BellSouth provide CLECs with nondiscriminatory access to OSSs, not any specific type or level of access. Local Interconnection Order, 11 FCC Rcd 15499, 15763, ¶ 517; Compliance Order at 32-33. As the following discussion confirms, BellSouth has satisfied the Act's requirements by providing CLECs access in "substantially the same time and manner" as BellSouth's own retail service personnel. Local Interconnection Order, 11 FCC Rcd at 15764, ¶ 518.

1. Pre-Ordering. BellSouth currently offers CLECs nondiscriminatory access to pre-ordering functions through its LENS interface. At the time of BellSouth's initial application, the Ordering and Billing Forum ("OBF"), which generates the industry standards, had not released a pre-ordering standard. And, contrary to the Department's contentions, DOJ at A-12 & n.8, the standards development work was not sufficiently advanced to allow BellSouth to deploy a standardized, integrated ordering/pre-ordering EDI interface, as some commenters have requested.[31] See, e.g., Sprint at 13. Similarly, the OBF's failure to release appropriate specifications made it impossible for BellSouth to deploy standardized technology that would allow a CLEC to obtain a CSR through EDI. ICG at 21. Recently, however, two tentative

[31]The Electronic Communications Implementation Committee ("ECIC") has been evaluating pre-ordering standards for some time. In April, 1997, ECIC had recommended that the industry adopt EDI as the "least objectionable" application-to-application pre-ordering interface. OSS Reply Affidavit of William N. Stacy ¶ 33 (attached hereto as exhibit 7). The ECIC continued to debate the pre-ordering standards issue, however, and recently endorsed not one, but two temporary "standards." The ECIC also indicated that only one of the two "standards" — the non-EDI one — likely would become the lone pre-ordering standard. See id.

recommendations for pre-ordering standards have been released. Stacy OSS Reply Aff. ¶ 33. This Commission has endorsed "the use of industry standards [a]s the most appropriate solution to meet the needs of a competitive local exchange market." Michigan Order ¶ 217. Accordingly, as BellSouth explained in its application, BellSouth will implement the new industry standard when it becomes available. See Stacy OSS Aff. ¶ 6; Stacy OSS Reply Aff. ¶ 34.

This is not to say that CLECs have been unable to obtain an integrated ordering/pre-ordering interface prior to the release of the industry specifications. See DOJ at A-12-14. For instance, CLECs currently may use LENS to get integrated pre-ordering/ordering. Stacy OSS Aff. ¶ 61.[32] BellSouth also offers CLECs specifications for CGI, an interface that allows for a direct, application-to-application interface with the CLEC's own OSSs. See id. ¶¶ 43-44; see also DOJ at A-10 & n.16.

BellSouth cannot reasonably be faulted on the basis that it has not unilaterally developed an operational CGI interface. See DOJ at A-11 & n.16; Stacy OSS Reply Aff. ¶¶ 36-38 (after reviewing the draft CGI specifications, AT&T informed BellSouth that it had no interest in implementing the specification). Because CGI allows BellSouth's OSSs to interface directly with the CLECs' OSSs, each individual CLEC must conduct any development work needed with respect to its own OSSs. As DOJ has noted, this may be an advantage for CLECs. DOJ at A-4 ("Application-to-application interfaces [between a BOC and its competitor] are particularly

[32] CLECs that elect to use LENS in fact obtain access that is better in some respects than that provided to BellSouth's own customer service representatives, because BellSouth has made the single LENS system available for business and residential pre-ordering and ordering. Stacy OSS Aff. ¶ 12.

helpful because they allow competing carriers to build their own software for processing transactions with a BOC."). But the flip-side of CLECs' flexibility is that BellSouth cannot undertake the necessary development work regarding CLECs' proprietary systems. See ICG at 20.

Contrary to AT&T's claims, BellSouth will make its CGI specifications available to any CLEC and has already provided them to AT&T. Stacy OSS Reply Aff. ¶ 39; see AT&T's Bradbury Aff. ¶ 40 & n.29; DOJ at A-26. Accordingly, there is nothing to stop MCI (or any other CLEC) from using CGI and EDI to create an integrated application-to-application interface capable of pre-ordering and ordering functions. See DOJ at A-13. That no CLEC has yet made the investment to do so should call into question the CLECs' claims about the urgency of such an integrated interface.[33] AT&T, for instance, preferred to wait for development of a custom-tailored interface (called "EC-LITE") AT&T plans to use with multiple incumbent LECs, rather than utilize BellSouth's CGI specifications. See Stacy OSS Aff. ¶ 42; Stacy OSS Reply Aff. ¶¶ 35-38. Having chosen to eschew CGI for its own business reasons, AT&T should not be heard to complain about its inability to obtain certain conveniences through LENS — although not significant to the vast majority of CLEC orders and not required under the 1996 Act — that are available through CGI. See AT&T at 26 (contending that the lack of such an interface requires

[33] The industry's willingness to develop standards for an ordering interface well in advance -- and independent -- of a pre-ordering interface likewise should cast doubt on opponents' claims that they cannot compete until the two interfaces are integrated.

CLECs to type information both into LENS and into their own operating systems); Sprint at 12-13 (same); see also Stacy OSS Reply Aff. ¶¶ 35-38 (discussing issue).

Several CLECs who have chosen to use the LENs pre-ordering interface raise specific concerns with its operation. KMC, for instance, alleges that BellSouth service representatives enjoy an advantage over CLECs because it sometimes takes a CLEC up to 10 minutes to obtain dial-up access to LENS. KMC is incorrect. As explained in BellSouth's Application, LENS has been thoroughly tested by BellSouth. Id. ¶ 117-118. Furthermore, just as BellSouth's service representatives typically "log on" to their systems once, at the start of a work session, the process of "dialing up" typically is done once, at the start of a work session, and does not affect individual customer-specific transactions. If that is not sufficient for KMC, BellSouth also provides LAN-to-LAN access to LENS, which provides a dedicated link to LENS and is an obvious alternative for CLECs concerned about the access time inherent in dial-up connections. Stacy OSS Aff. ¶ 10.

Equally groundless are complaints, relied upon by DOJ, that CLECs must repeatedly validate a customer's address when using LENS in inquiry mode. MCI at 33; AT&T's Bradbury Aff. ¶¶ 48-79. This mode was developed to assist CLECs by allowing them to browse selected pre-ordering screens, without calling up all the information available through LENS. See Stacy OSS Aff. ¶ 11. If CLECs would rather not use this short-cut, it can use the LENS firm order mode instead. Stacy OSS Reply Aff. ¶¶ 23, 25. The firm order mode, a predetermined logical sequence of screens, can be used without actually placing an order. This mode allows a CLEC to perform other pre-ordering functions relying on address validation without re-entering the customer's address. Stacy OSS Reply Aff. ¶ 25.

Opponents are wrong to assert that if an order is not placed, all information is lost. See Bradbury ¶¶ 80-85; see also DOJ at A-19. If, for example, a telephone number is "selected" in the firm order mode, the number database removes the number from the available pool of numbers, even if the order is not placed for another 90 days. Stacy OSS Reply Aff. ¶ 23.

Several commenters, including the DOJ, have suggested that LENS restricts CLECs' ability to obtain telephone numbers. These commenters are wrong. There are no limitations on CLECs' ability to obtain telephone numbers for new customers. See Stacy OSS Reply Aff. ¶¶ 18-22, 24. The restrictions discussed by CLECs and DOJ relate only to the quantity of numbers a CLEC can obtain without having a customer for those numbers. As a number conservation measure instituted in negotiation with AT&T, Stacy OSS Reply Aff. ¶ 20, BellSouth limits CLECs to reserving 100 unused numbers per central office, regardless of the pre-ordering interface they use. Stacy OSS Aff. ¶ 25. Moreover, LENS allows CLECs to select up to a maximum of twelve unused numbers per session. Stacy OSS Reply Aff. ¶ 24. CLECs can offer these selected numbers to their customers without launching a query to determine what other numbers are then available.

DOJ objects that LENS does not provide an actual due date when in pre-ordering mode. DOJ at A-18. LENS, however, provides CLECs with available installation dates when in inquiry mode and provides a calculated due date in the firm order mode. Stacy OSS Reply Aff. ¶¶ 28-29. CLECs therefore have access to due-date information equal to that of BellSouth's own retail service representatives, who likewise can only obtain a calculated due date when they submit an order. Stacy OSS Reply Aff. ¶ 29.

Some CLECs raise issues concerning access to customer service records ("CSRs"). Sprint claims it can only access the first fifty pages of a CSR. Sprint at 14. Similarly, KMC asserts that resellers must obtain large CSRs in paper and are unable to review the CSRs of some of their customers. KMC at 9. In fact, however, CLECs may order 54 pages per section for complex records, and are limited to seven sections. This allows CLECs to print up to 378 pages of any given CSR. Stacy OSS Reply Aff. ¶ 44.

Sprint advances another set of allegations that are based on factual inaccuracies. Contrary to Sprint's contention (at 15), a CLEC can submit a change order to BellSouth and change the features on a customer's current service electronically through EDI. Stacy OSS Reply Aff. ¶ 53.

2. Ordering and Provisioning. CLECs' contentions that BellSouth has failed to provide nondiscriminatory access to its ordering and provisioning OSSs are equally meritless.

Several commenters point out that EDI does not allow for electronic ordering of all resold services and UNEs. See ACSI at 48; Sprint at 10; MCI at 21; DOJ at 22. BellSouth, however, offers electronic ordering of interim number portability and the main UNEs, including loops and ports, through EDI. Stacy OSS Aff. ¶ 58; Stacy OSS Reply Aff. ¶ 30. The 34 resale services which may be ordered using EDI represent more than 90 percent of BellSouth's revenues from residential and small business operations. Stacy OSS Aff. ¶ 58. Moreover, many complex unbundled elements are infrastructure elements, such as trunking, that may be ordered over EXACT. Stacy OSS Aff. ¶ 59. Electronic ordering is not practical for complex services that require extensive negotiations with the customer and are ordered in low volumes, whether these

services are ordered by BellSouth's retail operations or a CLEC. See BellSouth Br. at 25 n.18; Stacy OSS Aff. ¶¶ 63-69; Stacy OSS Reply Aff. ¶ 52.

BellSouth added additional mechanized service order generation capabilities for UNEs on October 6, 1997. See Stacy OSS Aff. ¶ 58; Stacy OSS Reply Aff. ¶ 51. BellSouth's manual systems were, however, amply sufficient to process the low volume of CLEC orders expected (and actually placed) up to early October. See Stacy OSS Aff. ¶ 133 & WNS-47 (discussing manual procedures); Stacy Performance Aff. ¶¶ 4-11 (discussing BellSouth service centers). BellSouth's recent upgrades therefore are just further confirmation that, as discussed in BellSouth's Application, the capacity of BellSouth's systems is being increased to handle CLECs' anticipated future demand without discriminatory delays. See BellSouth Br. at 23; Stacy OSS Aff. ¶¶ 119-134.

BellSouth provides CLECs with prompt confirmation of their orders. After receiving a properly formatted order over EDI or LENS, BellSouth generally provides a firm order confirmation within 24 hours. Stacy OSS Reply Aff. ¶ 56.[34] For electronic orders, the firm order confirmation is provided electronically; for manual orders, the firm order confirmation is provided by facsimile.

Commenters who have experienced longer delays are likely formatting their requests incorrectly. As MCI concedes, "[a]t these early stages, CLECs are still learning the process and

[34] Contrary to KMC's contention, KMC at 10, LENS provides firm order confirmations to resellers and facilities-based CLECs in the same manner. See Stacy OSS Reply Aff. ¶ 57.

are likely to make mistakes." MCI at 15. The number of CLEC-formatting errors is, however, decreasing dramatically. See Stacy OSS Aff. ¶¶ 111-112.

Contrary to CLEC claims, BellSouth's electronic firm order confirmations identify both the class and type of the service ordered by the CLEC. Stacy OSS Aff. ¶ 75; Stacy OSS Reply Aff. ¶ 57. BellSouth likewise has attempted to ensure that the CLEC is notified when its customer misses an appointment. To that end, BellSouth currently provides missed appointment jeopardies electronically. Stacy OSS Reply Aff. ¶ 47.

CLECs are correct that most rejected orders are handled manually.[35] MCI at 14. Such handling (for which BellSouth has ample staffing, see Stacy Performance Aff. ¶¶ 4-11; Stacy OSS Aff. ¶ 133) allows BellSouth to attempt to cure the CLEC's error, and, if necessary, return the order to the CLEC with a notice of what corrections are necessary to ensure proper processing. Stacy OSS Aff. ¶¶ 76-77. Manual handling thus provides CLECs with error-handling that is comparable to what BellSouth provides itself. Stacy OSS Reply Aff. ¶ 48. Nevertheless, and despite the fact that CLECs such as AT&T are not yet ready to handle electronic order rejections, BellSouth is developing an electronic order response capability for EDI that will automatically return improperly formatted errors to CLECs with the most likely formatting errors identified. Stacy OSS Aff. ¶ 75; Stacy OSS Reply Aff. ¶ 47.

LENS was designed primarily as a pre-ordering tool for CLECs and is not intended to support all large-scale ordering functions. Stacy OSS Aff. ¶ 46. For instance, LENS does not

[35]Contrary to LCI's contentions (at 3 n.4), if an order is canceled, EDI sends an electronic order change to the CLEC. Stacy OSS Reply Aff. ¶ 57.

allow CLECs to add or delete features, DeltaCom at 23, only accepts orders of six lines or less, and only allows multi-line hunt group to be switched "as is." WorldCom/Ball Decl. ¶ 11. All of these functions are easily accomplished using the industry-standard EDI interface, which ensures CLECs nondiscriminatory access to BellSouth's OSSs for ordering and provisioning functions. Stacy OSS Aff. ¶ 46, 71; Stacy OSS Reply Aff. ¶ 55.

Even though it is currently satisfying the "nondiscriminatory access" requirement established in the Act, BellSouth is continuing to work closely with CLECs to resolve any concerns or problems they may have with any of the ordering interfaces. BellSouth will continue to provide CLECs with such assistance after in-region, interLATA relief is granted.

3. Maintenance and Repair. BellSouth provides CLECs with access to the industry standard T1M1 trouble reporting interface, but also provides access to maintenance and repair services through TAFI, the same system used by BellSouth's own customer service representatives. Stacy OSS Aff. ¶ 82. TAFI provides access to repair and maintenance functions that far surpasses the industry standard, and few commenters have made any criticism of its capabilities. See AT&T at 28 (conceding that the industry standard provides only limited access to maintenance and repair systems).

CLECs are provided with direct access to TAFI. Stacy OSS Aff. ¶ 89 & Ex. WNS-33. Sprint's contention that BellSouth employees retrieve the CLEC's maintenance and repair information and manually enter it into BellSouth's systems, Sprint at 15, is thus incorrect. CLECs are able to input trouble reports, test and clear trouble reports with the customer on the line, obtain commitment times, and check on the status of previously entered trouble reports in the

same way BellSouth's retail representatives would. Stacy OSS Aff. ¶ 90. Using TAFI, CLECs generated over 3,000 trouble reports from June through September 1997; performance data (as well as testing) confirm that the access BellSouth provides for this purpose is nondiscriminatory. Stacy OSS Aff. ¶¶ 119-134.

4. Capacity. BellSouth has subjected its electronic interfaces to stringent stress testing. See id. ¶¶ 117-118. Contrary to some commenters' contentions, see e.g., DOJ at A-28-30, these systems have more than adequate capacity. In August 1997, BellSouth processed more than 10,000 local service requests region-wide. Stacy OSS Aff. ¶ 121 & Ex. WNS 43. (In September, almost 17,000 orders were processed. Stacy OSS Reply Aff. ¶ 62). Even at these levels, however, BellSouth's systems have more than 90 percent excess capacity, and additional capacity can be added easily. Id. ¶ 61. Concerns about the capacity of BellSouth's systems therefore are misplaced.

In fact, supposed capacity problems may be nothing more than the consequences of CLEC errors. For instance, AT&T's allegation that the Residence Street Address Guide ("RSAG") "collapsed" in response to an increase in orders is incorrect. See AT&T at 37. The problem cited by AT&T arose in an interim address validation system that AT&T was using prior to its implementation of LENS. Multiple AT&T employees were improperly using the same log-in identification to access this system and also were inputting NPA/NXX combinations that are not found in BellSouth's service territory. Stacy OSS Reply Aff. ¶¶ 45-46. Even though AT&T describes them as such, the resulting error messages were not RSAG errors, but rather error messages identifying improper entries (into a system superseded by LENS). Id.

5. CLEC Training and Access to Information.

BellSouth provides CLECs with extensive training on its electronic interfaces. To date, BellSouth has trained more than 175 CLEC employees on LENS. Stacy Reply OSS Aff. ¶ 64. LENS training includes an overview as well as actual LENS log-in and use. Students are shown procedures for obtaining pre-ordering information, customer service records, address validation, telephone numbers, features and services, due dates, as well as for performing conversions "as-is" and "as-specified," viewing of firm order commitments, checking the status of orders, and changing existing orders. Stacy OSS Aff. ¶¶ 135-144; Stacy OSS Reply Aff. ¶ 64. Similarly exhaustive training on TAFI also is provided to CLECs. Many of the CLECs who now criticize BellSouth's training have been highly complimentary of that training outside section 271 proceedings. LCI, for instance, sent BellSouth a letter praising the EDI training its personnel received in July, 1997. Stacy OSS Reply Aff. ¶ 66.

Extensive documentation regarding BellSouth's OSSs also is provided to CLECs, both as part of the training classes and thereafter. BellSouth provides all necessary specifications, business rules, and other information required to use BellSouth's OSS interfaces. See Stacy OSS Reply Aff. ¶ 65 (listing documentation). The LENS Users Guide, for example, was updated on September 20, 1997 and is available on BellSouth's World Wide Web site. Stacy OSS Reply Aff. ¶ 69. BellSouth provided CLECs with advance notice of the most recent changes to LENS and will continue to provide similar notice in the future. Stacy OSS Reply Aff. ¶ 64.

Several commenters have cited problems with the LCSC that were identified in an independent audit commissioned by BellSouth last Spring. See, e.g., ICG at 26-34. The CLECs

concede that many problems identified in that audit have been fixed. Id. at 31. Indeed, a subsequent audit by the same auditor concluded that all remaining problems stemmed from problems beyond BellSouth's control, such as "the lack of predictability of work volume input, and the lack of completeness (quality) in the orders received from CLECs." DeWolff, Boberg & Associates, Inc. Audit Report at 2 (transmitted to BellSouth Sept. 15, 1997), reproduced as Stacy OSS Reply Aff. Ex. 5.

D. Performance Measurements

BellSouth furnished with its Application, and has agreed to provide in the future, performance measurements that allow the SCPSC, interested CLECs, and this Commission to verify and monitor BellSouth's provision of network interconnection and access on a nondiscriminatory basis. In order to provide these measurements, BellSouth has created a data warehouse to collect and produce the data necessary to generate these measurements. Stacy Performance Aff. ¶ 13. Through this data warehouse, BellSouth is capturing and storing every single order that it has processed for both its retail units and its CLEC customers. Stacy Aff. ¶ 14. CLECs will have direct access to this data warehouse to verify that they are receiving interconnection and network access in accordance with the 1996 Act. Id. ¶ 15.

The DOJ has concluded that "BellSouth is to be commended for committing itself to such a system of gathering, storing, and providing access to performance data." DOJ at A-33. The DOJ has further emphasized that BellSouth's approach "is clearly a desirable one, and the Department strongly supports these commitments." Id. In fact, the DOJ has "urge[d] other BOCs to adopt a similar approach." Id.

Yet despite these accolades, the DOJ and the CLECs list various measurements that they would prefer BellSouth produce, in addition to the extensive measurements that BellSouth already has produced. See e.g. ACSI at 48-50; AT&T at 31-34; DOJ at A-35; Intermedia at 44-45; LCI at 7; MCI at 47-51. Some of the measurements desired by commenters have in fact been produced by BellSouth, while others would merely disclose the same information already revealed by BellSouth's measurements. See Reply Performance Affidavit of William N. Stacy ¶ 2 (attached hereto as exhibit 8). More importantly, however, BellSouth simply is not obligated to produce (or to commit to producing) these particular performance measurements to meet the requirements of section 271. Id.

CLECs and the DOJ offer no statutory support for their claim that BellSouth has failed to meet performance measurement "requirements." As construed by the Commission, the Act simply requires BellSouth to demonstrate by a preponderance of the evidence that CLECs are able to receive interconnection and network access in a nondiscriminatory fashion. See Michigan Order ¶ 45. The Act is silent as to the type of evidence that BellSouth may provide to meet this burden. It is for BellSouth — not the Commission, not DOJ, and certainly not CLECs — to determine what evidence to present to carry this burden.

While the Commission stated its belief that the "most appropriate solution to meet the needs of a competitive local exchange market" is "the use of industry standards," Michigan Order ¶ 217, section 271 affords no basis for imposing such standards. Congress intended performance measurements, if any, to be generated on a case-by-case basis, through the negotiation of voluntary agreements between CLECs and BOCs. See 47 U.S.C. § 252(a). To aid in these

negotiations, Congress provided for mediation and arbitration by state commissions. See 47 U.S.C. § 252(a)(2), (3). Congress did not intend that these procedures would be circumvented by national decrees. See generally Iowa Utils. Bd., 120 F.2d 753.

CLECs nevertheless are attempting to obtain through section 271 proceedings the national standards that they have thus far been unable to secure through federal legislation or a federal rulemaking. Unlike measurements that are negotiated as part of interconnection negotiations, in which a CLEC must make reasonable demands or fail to reach agreement, in a section 271 proceeding a CLEC can be inflexible and exorbitant in its demands, because only the Bell company applicant suffers from delay and confusion of the issues.

AT&T's comments vividly illustrate this problem. AT&T complains about the performance measurements that BellSouth has made available, and insists that BellSouth's application should be rejected solely on the basis of the type of measurements that BellSouth has submitted. AT&T at 33. According to AT&T, BellSouth's failure to submit data on every single performance measurement discussed by the Commission in its Michigan Order is "fatal to BellSouth's application." Id. AT&T also points to twenty-two performance measurements to which Bell Atlantic and NYNEX voluntarily agreed without regard to the requirements of sections 251 and 252, as "further guidance" that BellSouth should follow. Id. AT&T does not acknowledge that it did not request these measurements as part of its own interconnection agreement with BellSouth. Instead, in its interconnection agreement, which covers all nine states in BellSouth's region, AT&T and BellSouth agreed that BellSouth would provide a set of performance measurements that comprises just some of the measurements BellSouth has provided

with its application. See Stacy Performance Aff. ¶¶ 16, 28. Incredibly, AT&T now contends that these same performance measurements, although perfectly acceptable for its own competitive operations, are inadequate for the Commission to use in assessing BellSouth's application.

Likewise, ACSI demands that BellSouth "correct five glaring deficiencies in its performance reporting." ACSI at 49. Yet ACSI concedes that these "deficiencies" are measurements that are not required as part of its voluntarily negotiated interconnection agreement with BellSouth. Id. at 48-49. ACSI thereby attempts to use the section 271 process to create new and higher roadblocks to BellSouth's competition in interLATA markets that, as shown by ACSI's own actions, are unrelated to ACSI's ability to compete in South Carolina.

Without the constraint of negotiations, CLECs do not have to determine which measurements are truly necessary to monitor nondiscriminatory access. Ignoring the state-level focus of section 271 proceedings, for example, ACSI demands to see data reported "on a city or office basis rather than an averaged statewide basis," because it "competes with BellSouth in specific urban areas." Id. at 49. Intermedia wants to see measurements for data services as well as voice services because such measurements are "particularly helpful" to it. Intermedia at 45. Teleport objects to BellSouth's failure to provide meet-point data. Teleport at 13. The list of desired measurements will be endless and ever-changing if the Commission does not call a halt, because with these demands CLECs believe that they have discovered a basis for blocking Bell company competition without having to point to a single deficient checklist item.

Other objections to BellSouth's performance measurements are based on an apparent misunderstanding of what BellSouth's performance measurements actually reveal. For example,

the DOJ concludes that BellSouth's measurements "fall considerably short of what is needed," primarily because BellSouth has not provided actual installation intervals. DOJ at A-33. In support of this conclusion, the DOJ relies on the Commission's statement in the Michigan Order that in a future application Ameritech should provide average installation intervals. Michigan Order ¶ 166. Ameritech had provided the Commission with a measurement that only tracked installations completed outside of a six-day interval. Id. The Commission concluded that this measurement could mask discrimination, because "'if 100 percent of Ameritech's retail customers receive service on day one, while 100 percent of the CLEC's customers do not receive their service until day five, then a report of installations outside of six days will show parity of performance, not revealing the discriminatory difference in performance between Ameritech and the CLEC.'" Id. (quoting DOJ evaluation).

In response to this concern, BellSouth has provided the Commission with measurements that track installation due dates on a daily basis. See Stacy Performance Aff. Ex. WNS-10. When combined with BellSouth's data showing the percentage of due dates that are met, id. at Ex. WNS-9, these measurements allow the Commission to compare performance between BellSouth's retail and wholesale operations for business and residential classes of service, and dispatch and nondispatch service orders, down to the day. Id.

The DOJ contends that BellSouth's additional data are still not enough. It is concerned that while BellSouth has demonstrated that it does not discriminate in the scheduling of appointments, and does not discriminate in the meeting of appointments, it still might be engaged in discrimination for the small number of orders that are not met on the scheduled due date. DOJ

at A-34. It is hard to imagine how DOJ's theoretical objection could have any real relevance at the levels of timeliness — almost never lower than 90 percent and often greater than 99 percent — achieved by BellSouth. See Stacy Performance Aff. Ex. WNS-9. Moreover, the DOJ's proposed remedy, an average installations measurement, would not address the supposed problem DOJ identifies. Because CLECs are able to request due dates that meet their particular needs (and that are often later than the date assigned on a nondiscriminatory basis by BellSouth's systems), it is CLECs, and not BellSouth, that control the critical variable under DOJ's proposed measurement. If CLECs were typically to request due dates one day later than the date offered by BellSouth, the average installation interval measurement would reveal spurious "discrimination" — even if BellSouth was meeting requested due dates 100 percent of the time. In order for this measurement to be accurate, BellSouth would have to "back out" all cases in which CLECs reject the first available due date — a cumbersome process BellSouth's OSSs have not been designed to accomplish.

While BellSouth does not agree that this further refinement of data discloses anything of significance, BellSouth has made it available as part of this response, and will agree to do so going forward if the Commission somehow deems the measure necessary for compliance with section 271. See Stacy Reply Performance Aff. ¶ 10. Predictably, given BellSouth's lack of discrimination in scheduling and meeting appointments, the rescheduling of missed appointments reveals no discrimination. See id. Ex.8.

Other measurements desired by the DOJ and CLECs have in fact been produced by BellSouth. See id. ¶¶ 3-6. For example, Michael J. Friduss, the consultant upon whom the DOJ

relied in reaching its conclusions regarding performance measures, asserts that BellSouth has not agreed to provide "any pre-ordering performance measures." DOJ's Friduss Aff. ¶ 54.[36] Mr. Friduss has failed to review BellSouth's Application carefully. BellSouth has produced pre-ordering OSS data for scheduled and actual availability, see Stacy Reply Performance Aff. ¶ 3; Stacy OSS Aff. at Ex. WNS-35 and Ex. WNS-36, as well as most of the response time intervals mentioned by Mr. Friduss. See Stacy OSS Aff. ¶ 9 & Ex. WNS-37; Stacy Performance Reply Aff. ¶ 3.

MCI complains that BellSouth "provide[d] only data showing the number of trunk groups that had blockage rates greater than 3%." MCI at 63-64. This is wrong. BellSouth's Application provided detailed information on the four trunk groups in South Carolina for which blocking rates exceeded 3 percent — including the actual percentage of blocking. Stacy Performance Aff. ¶¶ 76-79 & Ex. WNS-11A. BellSouth also provided region-wide data comparing actual blocking percentages for CLECs and BellSouth, in addition to comparing the percentage of trunk groups that exceeded a particular threshold. Id. ¶ 83.

Initial performance measurements for South Carolina and BellSouth's region demonstrate that in every service category, CLECs have received service that is substantially similar to, or better than, the service received by BellSouth's own retail customers. Id. ¶¶ 21-22. Accordingly, AT&T is reduced to contending that BellSouth's use of three standard deviations as a measure of

[36] It is disturbing that DOJ takes its view of "required" performance measurements from a private consultant who counts "new local service providers" — i.e., CLECs — among his clients. See DOJ's Friduss Aff. ¶ 11.

nondiscriminatory performance is inappropriate. AT&T asserts that this deviation "has been specifically rejected as too lax by the courts in discrimination cases." AT&T at 36. Although not relevant to the issue at hand, AT&T's supporting authority — Rendon v. AT&T Technologies, 883 F.2d 388, 397-98 (5th Cir. 1989) — is revealing in other ways. In Rendon, AT&T, as the defendant, argued that "there is a strict legal benchmark that requires three standard deviations to demonstrate that data has statistical significance." Id. at 397. The Fifth Circuit rejected AT&T's assertion of an absolute legal rule requiring the standard BellSouth has used, and concluded that the district court did not err when accepting a statistical model based on 2.9 standard deviations. Id. at 397-98. But that holding certainly does not explain AT&T's 180-degree swing in this proceeding, where it claims that the three standard deviations it formerly championed is "too lax." AT&T at 36. AT&T's turnabout demonstrates once again how far that company will go to preserve the billions of dollars in excess profits it earns by delaying section 271 relief.

Other CLECs attempt to rebut BellSouth's statistical evidence by questioning the utility of performance measurements, even though these same CLECs simultaneously argue that such measurements are required under section 271. For example, ACSI argues that BellSouth's measurements are "meaningless" because of what it melodramatically refers to as "horror stories" involving its interconnection with BellSouth's network. ACSI at 51. If these stories exist, why has ACSI never filed a single complaint with the SCPSC, or requested mediation or arbitration, as is its right under the Act?[37] More importantly, ACSI misses the whole point of the aggregated

[37] As the SCPSC concluded, "if CLECs have genuine issues concerning BellSouth's satisfaction of the Act's requirements, those issues would have been raised through the complaint

performance data it suggests should be mandatory. Perfection in every individual transaction is not required under any provision of the 1996 Act. As the SCPSC observed, CLECs have no right "to hold BellSouth to a standard of operational perfection that is not found in the Act and cannot reasonably be expected of any carrier." SCPSC at 12.

BellSouth's existing measurements confirm that BellSouth has provided CLECs with nondiscriminatory network interconnection and access that allows them to compete. Stacy Performance Reply Aff. ¶ 15. The Act requires no more. Only when the Commission firmly adopts this principle will CLECs' improper and anticompetitive demands for national reporting requirements cease.

E. Contract Service Arrangements

Aside from their over-arching arguments for federal usurpation of state pricing authority, which are discussed above, commenters raise an additional issue regarding BellSouth's resale offerings that deserves detailed discussion. They object that BellSouth makes contract service arrangements ("CSAs") available to resellers at the already discounted price established in the CSA, without tacking on a further 14.8 percent discount.[38] A related objection is that BellSouth offers CSAs for resale only under the terms of the CSA, including eligible end users. See AT&T

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mechanisms that are designed for and normally used by carriers for that purpose." SCPSC at 11. No such complaints have ever been filed with the SCPSC — not by ACSI about its "horror stories," nor by any other CLEC.

[38] See AT&T and LCI's Motion at 14-18; AT&T at 4, 42-43, AT&T's McFarland ¶¶ 6, 28-36; AT&T's Caroll ¶¶ 31-32; MCI at 65; MCI's Henry at 32-33; Telecommunications Resellers at 22-23, Sprint at 7-9.

& LCI Motion at 17-18. These arguments have been rejected by the SCPSC and, in any event, lack any merit.

A CSA is an individually negotiated arrangement between BellSouth and an end user whose local service is subject to competition. BellSouth's tariff provides: "When economically practicable, customer specific contract service arrangements may be furnished in lieu of existing tariff offerings provided there is reasonable potential for uneconomic bypass of the Company's services." General Subscriber Service Tariff § A5.6.1 (reproduced as Varner Reply Aff. Ex. AJV-2). The tariff further provides that "[u]neconomic bypass occurs when an alternative service arrangement is utilized, in lieu of the Company's services, at prices below the Company's rates but above the Company's incremental costs." Id. Typically a CSA would be offered to a high volume user in South Carolina seeking services such as Centrex or fiber optic connections, which are subject to facilities-based competition (even though CLEC entry into South Carolina markets has been limited to date). See Varner Reply Aff. ¶ 40.

In allowing BellSouth to negotiate CSAs with some customers in lieu of charging tariffed rates, the South Carolina PSC explained that it was "mindful of the objective of universal telephone service in South Carolina" and that "the public interest requires that regulation, while a necessary surrogate for competition, not be an impediment to a utility's ability to retain existing customers and/or attract new ones in competitive situations." Order No. 84-804, at 3 (Oct. 5, 1984) (Ex. 18 hereto). Therefore, to facilitate BellSouth's recovery of costs in the face of competition, the PSC permitted BellSouth to negotiate CSAs so long as BellSouth "fil[es] with this Commission and the Consumer Advocate quarterly reports showing the number and type of offerings provided under this 'contract services' proposal as well as provides access to

information necessary to determine that such services are fully compensatory to" BellSouth. Id. at 4. In 1997 BellSouth has reported twenty CSAs to the South Carolina PSC and has negotiated three additional CSAs that will be included in BellSouth's next report. Varner Reply Aff. ¶ 41.

Pursuant to its SCPSC-approved Statement, BellSouth makes CSAs available to resellers. Statement § XIV.B.2; see Varner Aff. ¶ 191; Varner Reply Aff. ¶ 40-45. BellSouth offers its CSAs to resellers at the same rates paid by end users, in accordance with the SCPSC's rulings. In the AT&T Arbitration, the SCPSC held that AT&T "should not receive a further discount below the contract service arrangement rate." AT&T Arbitration Order at 4-5 (Application App. B at Tab 69). It explained that because "the contract price for these services has already been discounted from the tariffed rate in order to meet competition," "AT&T should receive the same rate as the CSA customer." Id.

The SCPSC's decision on this local pricing matter is determinative. See BellSouth Br. at 37; supra Part III(A). Indeed, the Commission has acknowledged that "the substance and specificity of rules concerning which discount and promotion restrictions may be applied to resellers in marketing their services to end users is a decision best left to state commissions." Local Interconnection Order, 11 FCC Rcd at 15971, ¶ 952. Thus, the Commission's rules permit incumbent LECs to "impose a restriction [on resale] . . . if it proves to the state commission that the restriction is reasonable and nondiscriminatory." 47 C.F.R. § 51.613(b). Although the Commission has held that the 1996 Act provides for resale of contract and other customer-specific offerings, Local Interconnection Order, 11 FCC Rcd at 15970, ¶ 948, the Commission has never questioned the state commissions' authority to determine the appropriate discount available to resellers.

The South Carolina PSC's decision not to impose a further discount for already-discounted CSAs is in fact the only sensible approach. As the Commission has observed, the "State commissions have established rate structures that take into account certain desired balances between residential and business rates and the goal of maximizing access by low-income consumers to telecommunications services." Id. at 15975, ¶ 962. CSAs enable BellSouth to offer prices lower than the tariffed rate established by the SCPSC where necessary to meet a competitive threat. If BellSouth lacked this flexibility to offer a competitive price in the face of facilities-based competition, it would lose these customers and the contribution to total cost recovery they represent, all due to rate policies that were intended to ensure the very contribution that would be lost.

Likewise, if CLECs were entitled to an automatic 14.8 percent discount beyond the discounts already included in BellSouth's CSAs, end users would automatically be able to chop an additional discount off of BellSouth's competitive price simply by turning to BellSouth's competitors. As a practical matter, end users would negotiate their best price with BellSouth, sign a short-term CSA, and then switch to a lower-priced reseller at the earliest opportunity. This would interfere with BellSouth's cost recovery under the South Carolina PSC's pricing regime and subvert free-market negotiations between end users and BellSouth.

Conversely, the South Carolina PSC's policy regarding CSAs does not place CLECs at any competitive disadvantage. For one thing, CLECs can order services for resale either at the CSA rate, or at the tariffed retail rate minus the 14.8 percent discount. See AT&T Arbitration Order at 4 ("AT&T would still be allowed to package [a particular CSA] service with other

services in order to compete with BellSouth or other entrants."). For another, the SCPSC has explained:

> Because CSAs, unlike ordinary retail offerings, are individually negotiated arrangements, BellSouth does not bear ordinary marketing costs with respect to these services. It would be impossible for the Commission to determine on a case-by-case basis what additional discount, if any, is necessary to account for BellSouth's potential cost savings with respect to a particular CSA. What is clear, however, is that if applied to CSAs, the 14.8% resale discount applicable to BellSouth's generally available retail offerings would greatly overstate the costs avoided by BellSouth and in many cases might require BellSouth to sell services to CLECs at rates that are below BellSouth's costs.

SCPSC at 10.

While opponents' proposed 14.8 percent discount on top of the CSA discount would undermine the SCPSC's pricing structure, AT&T and LCI's proposal to resell CSA discounts to different end users would do even more damage. AT&T & LCI Motion at 17-18. AT&T and LCI miss the point that a CSA is by definition tailored to a particular competitive situation. Although they assert that "if BellSouth wishes to offer a CSA to another end user today, it is free to do so," AT&T & LCI Motion at 18, this ignores that under BellSouth's tariff, it may offer a CSA only to respond to a competitive situation where there is a threat of uneconomic bypass. If resellers were permitted to offer CSAs to customers generally throughout South Carolina, the SCPSC's business and residential tariff structures (which are the starting point for resale rates under section 252(d)), would be unsustainable. Cf. SCPSC at 10-11 ("our policy is the only reasonable way to implement the Act's resale provisions").

Finally, there is no basis for speculation that BellSouth might seek to convert customers to CSAs in order to "evade" the SCPSC's 14.8 percent wholesale discount. Any discount off the tariffed rate that BellSouth offers through CSAs means a smaller profit for BellSouth's retail

operations. Moreover, BellSouth might well earn more from a wholesale transaction at the 14.8 percent discount than from a CSA at some lesser discount, because the wholesale transaction allows BellSouth to avoid negotiating the CSA, issuing end user bills, and collecting payments from the end user. In addition, if BellSouth were to use CSAs improperly, the SCPSC's procedures would allow detection of such conduct. Because BellSouth's quarterly CSA reports are available not only to the PSC and the Consumer Advocate, but also to the public at large, competitors can scrutinize the terms of each and every BellSouth CSA. The PSC's quarterly reporting requirements thus ensure that opponents have all the information they need to challenge any effort by BellSouth to evade tariff restrictions on the use of CSAs.

F. Miscellaneous Objections

In addition to the central checklist issues addressed above, opponents raise a host of incidental objections to BellSouth's compliance with certain checklist items. Most of these claims are stale or untrue. Many are legally irrelevant to BellSouth's checklist compliance. Some are being addressed by BellSouth on an ongoing basis, in accordance with BellSouth's duties under sections 251 and 252 and its commitment to provide CLECs high-quality service. These claims and BellSouth's successful actions to address them establish two critical points. First, this Commission cannot expect local competition issues to be "resolved" anytime in the foreseeable future. It would be folly to deny consumers the benefits of interLATA competition while waiting for stasis on a set of issues that is ever-changing. Second, while not perfect, BellSouth's record of addressing CLECs' legitimate concerns is extraordinarily good. A finding that BellSouth has satisfied the checklist in South Carolina will set the bar for section 271 relief so high that other Bell companies will have to jump to reach it. Yet, as Congress intended, the